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# James Monaghan v. T.G. Alexander : Brief of Appellant

Utah Supreme Court

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Wallace Calder; attorney for appellant.

Charles DeMoisy; attorney for respondent.

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### Recommended Citation

Brief of Appellant, *Monaghan v. Alexander*, No. 4926 (Utah Supreme Court, 1929).

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# In the Supreme Court of the State of Utah

OCTOBER TERM, 1929.

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**JAMES MONAGHAN,**  
Plaintiff  
VS  
**T. G. ALEXANDER,**  
Defendant

\* **FILED**  
SEP 25 1929

CLERK SUPREME COURT UTAH

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**BRIEF**

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Appeal from the District Court of Uintah County, State  
of Utah, **MARTIN M. LARSON**, Presiding Judge

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**WALLACE CALDER,**  
Attorney for Apellant.

**CHARLES DeMOISY,**  
Attorney for Respondent.

# In the Surpreme Court of the State of Utah

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JAMES MONAGHAN,

Plaintiff and respondent

vs

T. G. ALEXANDER,

Defendant and Appellant

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## APPELLANT'S BRIEF

The issue involved in this appeal resolves itself into the question "What is the measure of damage for failure to deliver certain hay under a contract of sale?" Appellant's contention is that the true measure of damage is the difference between the contract price and the market price of the hay at the time and place provided for delivery and that plaintiff's failure to introduce any evidence as to market value renders the evidence insufficient to support the judgment.

In support of our contention we cite Section 5176 Compiled Laws of Utah, 1917 under Title 98 "Uniform Sales Act." This section provides that "Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered."

Plaintiff alleges no special circumstances showing proximate damages of a greater amount, nor does he

allege that there is no available market. On the other hand he alleges in his complaint (paragraph 4) that the amount paid by him was the "market value." But as pointed out there is no evidence in the record supporting this allegation.

This court in *Love et al vs St. Joseph Stock Yards Co.* 51 Utah 305 has taken the position that there must be a difference in plaintiff's favor between the market value and the contract price (p. 311) as a foundation for damages. We submit that to disregard this fundamental rule as in the present case permits speculative and excessive damages to creep into the case without proper foundation for their allowance.

Our statutory rule for the measure of damages is in keeping with the common law rule "Where the breach consists in the failure of the seller to deliver the goods, the measure of damages is ordinarily the difference between the contract price and the market price of the goods at the time and place of delivery." (35 Cy. 633 supported by two pages of citations from practically all states, U. S., England and Canada.) *Peterson vs Petterson et al*, 42 Utah, 270. (See also *Celery vs Shand*, 48 Utah 640. *Sangers vs International Smelting Co. et al*. 50 Utah 423.

The failure of plaintiff to establish the market price in this case is not, we submit, a mere technicality or harmless error. Defendant, relying on the advice of his counsel, Thos. W. O'Donnell, Esq. served the notice of termination of the contract set forth in his answer and his testimony is uncontradicted that he sold his hay for six dollars per ton. Plaintiff submits evidence of having paid \$3044.75 during the third year but says: "The fourth year I did my best to cut that down, get the hay cheaper. My expenses amounted

to only \$1551.00." (Trans. 26, Abstract 7). It would seem, therefore, that these amounts should not have been accepted as the measure of damage without further showing as to the market value.

If our position is well taken, and we feel assured that it is, there should be no occasion for extended citations or lengthy discussions since the matter involved is statutory. To enter upon a further discussion as to the insufficiency of the evidence relative to the pasturage would seem uncalled for. We respectfully submit that aside from the question of whether defendant was justified in his action in terminating his contract there is no legal foundation whatsoever for the judgment of damages entered against him. We therefore request that the judgment be set aside and a new trial be granted.

Respectfully submitted,

WALLACE CALDER

Attorney for Defendant.